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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2184/2000
MA No.2607/2000

New Delhi this the 3rd day of September, 2001.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

1. K.C. Aggarwal,
S/o late Sh. Manohar Lal,
1055, S-IV, R.K. Puram,
New Delhi.
2. A.S. Rana,
622, S-III, R.K. Puram,
New Delhi.
3. K.B. Chettri,
C-230, Nanakpura,
New Delhi.
4. A.K. Gangopadyaya,
S/12, R.K. Puram,
New Delhi.
5. A. Munaswami,
1055, S-IV, R.K. Puram,
New Delhi.
6. K. Srinivasa Rao,
50-A, Thimayya Road,
Delhi Cantt.

-Applicants

(By Advocate Shri R.K. Shukla)

-Versus-

1. Union of India through
the Secretary,
Ministry of Defence,
New Delhi.
2. Engineer-in-Chief,
Army Hqrs.
Kashmir House,
Rajaji Marg,
New Delhi.

-Respondents

(By Advocate Shri B.S. Jain)

O R D E R (ORAL)

MA-2607/2000 for joining together is allowed.

2. The grievance in this OA is for grant of special allowance, i.e, HSA to the applicants, which has been accorded to various personnel in view of affirmation of a case by the High Court in LPA wherein the memorandum

of 1982 was also set aside. The learned counsel of the applicants placing reliance on several decisions of this court, including OA-1137/94 dated 28.10.94, wherein the similarly situated persons have been accorded the HSA, contended that the applicant has not been meted out a differential treatment. Further placing reliance on an order passed by the respondents on 1.10.97 where one Kulwant Singh who has not even preferred an OA before this Court has been extended the benefit as given to the applicants of OA-2453/95. In this view it is stated that the decision in LPA is not stayed by the Apex Court and as such till the same is set aside they are entitled for accord of HSA. It is also stated that the order passed by the respondents on 21.9.2000 taking the plea of organised and non-organised cadre is of no avail to them as the issue has already been put at rest in the LPA and the benefits have been accorded to the similarly circumstance.

3. On the other hand, strongly rebutting the contentions of the applicants the learned counsel for the respondents stated that the Military Engineering Service (MES) consist of five different cadres and functions and duties of first three cadres, viz., Engineers, Architect and Surveyors are technical in character and constitute the real core of MES. While rejecting the claim of the applicants it has been decided by them that as the same has been allowed to officers of organised Group 'A' service, technical and scientific service to which the applicants belong is not an organised. It is further stated that the OM issued in 1982 also disentitles the applicants for accord of HSA. Lastly it is stated that the LPA where the HSA was accorded is pending adjudication before the Apex Court in SLP-2490-91 filed in the year 1994 and till the

decision is arrived at by the Apex Court this OA may be pending. It is also stated that the judgments referred to by the applicants are in per incuriam as per the orders dated 9.6.82 and filing of SLP has not been brought to the notice of the Court at that time.

4. I have carefully considered the rival contentions of the parties and perused the material on record. No doubt in LPA the High Court has put at rest the controversy regarding accord of HSA to organised and non-organised cadre, rejecting the contentions of the respondents therein. The OM taken resort to by the respondents has also been set aside. The similarly situated persons have been accorded the said relief and in one of the judgements delivered by this Court the Apex Court has affirmed the same by rejecting the SLP on 5.2.93. Apart from it I also find that one Kulwant Singh who was similarly situated and the controversy regarding non-organised and organised cadre has also been adjudicated upon by the High Court and the decision is yet to be set aside by the Apex Court the Applicants are also legally entitled for the same but their entitlement shall be subject to final outcome to be arrived at by the Apex Court in SLP. Non-accord of HSA, in my considered view amounts to hostile discrimination under Articles 14 and 16 of the Constitution of India which cannot be countenanced.

5. In this view of the matter and having regard to the reasons recorded the present OA is allowed. The impugned order dated 20.9.2000 at Annexure A-1 is quashed and set aside. The respondents are directed to accord to the applicants HSA with all consequential benefits within a period of three months from the date of receipt of a copy

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of this order. However, this accord shall be subject to the final outcome of the SLP filed by the respondents and in the event a contrary decision has been taken by the Apex Court in the SLP the applicants are liable to refund this amount to the respondents.

6. The OA is allowed in the above terms. No costs.

S. Raju

(Shanker Raju)
Member (J)

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